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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
ANTHONY PAYNE,)	OEA Matter No. 1601-0054-01
Employee)	
)	Date of Issuance: May 23, 2008
)	
D.C. METROPOLITAN POLICE)	
DEPARTMENT,)	
Agency)	
_____)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Anthony Payne (“Employee”) is a police officer with the D.C. Metropolitan Police Department (“Agency”). On January 10, 2000, Employee was dispatched to respond to a burglar alarm at 1724 Franklin Street, N.E. He failed to inform the dispatcher when he arrived on the scene, but he eventually radioed to inform them that the premises were clear and there was no evidence of a burglary.¹ However, when the resident of the home arrived hours later, she called Agency to report that her home had been burglarized. After Agency conducted an investigation, it was determined that Employee neglected his duties to inform the dispatcher when he arrived at the scene and his duty to discover a burglary that was “nearly impossible” not to notice. Consequently,

¹ *OEA Hearing Transcript*, p. 136 (August 19, 2003).

he was suspended for 10 days without pay.²

In response to his 10-day suspension, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”). In his Petition, he alleged that Agency could not substantiate its claims of any wrongdoing. Therefore, he requested that OEA reverse his suspension.³

After conducting a hearing, the OEA Administrative Judge (“AJ”) issued her Initial Decision on May 10, 2005. According to the AJ, Agency proved that Employee failed to detect a broken window that was in plain view when he responded to the burglary. Agency also proved that Employee failed to make an entry in his log indicating the time that he arrived at the scene of the crime. Additionally, he failed to notify the dispatcher of his arrival. Therefore, the AJ found that Agency adequately proved that Employee neglected his duties. She also determined that neglect of duty is a cause for which adverse action could have been taken against Employee, and a 10-day suspension is within the range of penalty for such cause.⁴

On June 2, 2005, Employee filed a Petition for Review in response to the AJ’s Initial Decision. Employee conceded that he failed to document his arrival time on his inspection report and failed to notify the dispatcher. However, he contended that the ten-day suspension was not appropriate because Agency could not show that he failed to check the perimeter of the house.⁵ Employee also disputed testimony given by one of

² *Employee’s Petition for Appeal*, Attachment #4 (June 6, 2001).

³ *Id.* at 3.

⁴ *Initial Decision*, p. 6-7 (May 10, 2005).

⁵ *Employee’s Petition for Review*, p. 1-2 (June 2, 2005).

Agency's witnesses, the ADT alarm representative.⁶

There are three issues that this Board must address. First, we must determine if Agency proved that Employee committed the neglect of duty action with which he was charged. Second, we must consider if the neglect of duty claim was cause for an adverse action against Employee. Finally, we have to determine if the 10-day suspension was an appropriate penalty for the cause.

Employee conceded in his Petition for Review that he failed to enter his arrival time on his Daily Vehicle Inspection Report and failed to notify the dispatcher when he arrived at 1724 Franklin Street. According to Agency's General Rule 301.1, Part I-C-1, "members responding to calls for service assigned by the Communication Division dispatcher shall advise the dispatcher when they arrive on the scene by stating 'on the scene'."⁷ Therefore, Employee admitted that he violated Agency's regulations based on his failure to notify dispatcher. His duty was clear, and he failed to adhere to this task.

Although Agency does not provide any regulations that state that Employee had a duty to inspect the premises in response to a burglary, this duty is presumed by the Board given its nature and Employee's occupation. Agency found that Employee neglected to locate an easily accessible point of entry on an assignment for a burglary alarm. His failure resulted in an actual burglary that was discovered by the home owner several

⁶ During the OEA hearing, an ADT alarm representative testified that the alarm was triggered by a person in the rear of the house. He went into detail about the infrared motion detector designed to capture movement by humans based on the height of the sensors and the body temperature of humans. He made clear that animals do not have the same body temperatures as humans. *OEA Hearing Transcript*, p. 90-92 (August 19, 2003). After consulting a representative at an animal hospital, Employee provided that cats and dogs have similar body temperatures to humans. Therefore, it was his opinion that an animal could have triggered the alarm. It should be noted that this Board will not consider this information because it could have been raised before the Administrative Judge, but it was not. Therefore, in accordance with OEA Rule 634.4, this argument is deemed waived.

⁷ *OEA Hearing Transcript*, Agency Exhibit #6 (August 19, 2003).

hours later.⁸ Witnesses testified that evidence of a burglary was easily apparent with an assessment of the perimeter of the home.⁹ Therefore, it could be argued that Employee also neglected his duty to inspect the burglarized home. However, the failure to notify the dispatcher is enough to substantiate Agency's claim that Employee committed the neglect of duty act for which he was charged.

This Board agrees with the AJ's assessment that the neglect of duty charge was grounds for an adverse action claim against Employee. Agency charged Employee with violating General Order 1202.1, Part I-B-14 which reads: "neglect of any duty to which assigned or required by rules and regulations adopted from time to time by the Department." According to Agency's General Order, neglect of duty is cause for adverse action.¹⁰ As stated above, Agency provided that Employee's failure to notify the dispatcher was a neglect of his duties. Therefore, Agency was justified in bringing the adverse action against Employee.

In determining the appropriateness of Agency's penalty, OEA has consistently relied on *Stokes v. District of Columbia*, 502 A.2d 1006 (D.C. 1985). The factors that we must consider are whether the penalty was within the range allowed by law, regulation, and any applicable table of penalties; whether the penalty is based on a consideration of the relevant factors; and whether there is a clear error of judgment by agency.

⁸ *OEA Hearing Transcript*, Exhibit #2 (August 19, 2003).

⁹ Officer Sulla testified that he responded to the second burglary call to the home. He provided that there was a forced rear entry where a window was broken; a window on the door was broken; and the door lock had been destroyed. *OEA Hearing Transcript*, p. 55-56 (August 19, 2003). Additionally, testimony from Lieutenant Taylor revealed that in her opinion Employee did not respond to the radio call at all. She based this on her inspection of the premises; an interview with Employee; and the report filed by Employee. *Id.*, 34-35.

¹⁰ *Id.*, Agency Exhibit #5.

Employee's 10-day suspension was within the range of penalty allowed by regulation. Agency's General Order 1202.1 outlines the Table of Penalties for various causes of actions. The General Order clearly lists that the penalties for a neglect of duty charge range from a 15-day suspension to removal.¹¹

In assessing whether the penalty is based on a consideration of relevant factors, OEA relies on *Douglas v. Veterans Administration*, 5 M.S.P.R. 313 (1981). The *Douglas* factors provide that an agency should consider the following when determining the penalty of adverse action matters:

- (1) the nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
- (2) the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
- (3) the employee's past disciplinary record;
- (4) the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
- (5) the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in employee's ability to perform assigned duties;
- (6) consistency of the penalty with those imposed upon other employees for the same or similar offenses;
- (7) consistency of the penalty with any applicable agency table of penalties;
- (8) the notoriety of the offense or its impact upon the reputation of the agency;
- (9) the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
- (10) potential for the employee's rehabilitation;
- (11) mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
- (12) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

¹¹ *Id.* at 7.

During the OEA hearing, Agency's Inspector Glenn Shearod clearly showed that Agency considered each of the *Douglas* factors. He testified that Agency determined that Employee's failure to discover a burglary; his neglect in securing the premises; and his failure to notify the dispatcher were serious offenses in relation to his duties. Agency also found that the public should have confidence in the police, and Employee's failure to perform his duties reflects on the Police Department as a whole. Additionally, Agency found that Employee was on notice regarding the rules and regulations because he successfully passed the academy and is qualified as a sergeant.¹²

Agency did not impose a more serious penalty for the neglect of duty charge because of Employee's potential for rehabilitation; it believed that he made a mistake that could be corrected through a 10-day suspension. Agency considered the imposed penalty fair and just to deter such future conduct. It also noted that Employee had no prior disciplinary action taken against him.¹³ Therefore, Agency proved that it considered all relevant factors outlined in *Douglas* when determining Employee's penalty.

Based on the aforementioned, there is no clear error in judgment by Agency. It followed all of its regulations in suspending Employee. Employee failed to prove that his suspension was improper given the facts of the case. Accordingly, Employee's Petition for Review is **DENIED**.

¹² *OEA Hearing Transcript*, p. 123-127 (August 19, 2003).

¹³ *Id.*, 119-127.

ORDER

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **DENIED**.

FOR THE BOARD:

Sherri Beatty-Arthur, Chair

Barbara D. Morgan

Richard F. Johns

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.